IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Appeal From Order No. 227 of 2005

Date of decision: 11th October, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 227 of 2005

Smt. Nisha Devi W/o Late Bishan Singh,
R/o Vill. Darim,
Tehsil & District Nainital. ……Appellant

Versus

1. Pushkar Singh Rekwal S/o Sri Kundan Singh,
   Owner / Driver, Marshal Jeep No. UP 02-D-2915,
   R/o Vill. Darim, P.O. Nathuwakhan,
   Tehsil & District Nainital.
2. M/s National Insurance Company Ltd.,
   through its Regional Manager,
   Regional Office Canal Road, Tikonia,
   Haldwani, District Nainital. …….. Respondents

Mr. M.C. Kandpal, Senior Counsel with Mr. S.S. Chaudhary, Advocate for the appellant.
Ms. Janki Surya, Advocate for respondent No. 1
Mr. D.S. Patni and Mr. Manish Dalakoti, Advocates for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimant's appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal/District Judge, Nainital vide Award dated 09.08.2004 passed in M.A.C.P. No. 98 of 2003.

2. Claimant Smt. Nisha Devi, unfortunate widow of deceased Bishan Singh, claimed compensation of Rs. 10,00,000/- for his death in the motor accident, when on 13.03.2003, Marshal Jeep bearing registration No. UP02-D-2915, in which he was travelling, met with an accident due to the rash and negligent driving of its driver and fell in Kosi River resulting in serious injuries to Bishan Singh, who succumbed to those injuries during the course of his treatment in Base Hospital, Almora. The claimant pleaded that her husband Bishan

Singh used to earn Rs. 8,000/- per month from agriculture and by selling fruits and vegetables.

3. The owner and the insurer of the Jeep contested the claim and denied their liability to pay compensation to the claimant on the plea that the accident did not occur due to the negligence of the Jeep driver. The insurer took the further plea that the Jeep was being plied in breach of the policy conditions.

4. The claimant examined herself as PW1, whereas the owner and the insurer of the Jeep did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that claimant's husband Bishan Singh died on account of the injuries sustained by him in the motor accident on 13.03.2003; the accident occurred due to the rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimant.

6. As the evidence led by the claimant about the income of the deceased was not found reliable, the Tribunal assessed his income at Rs. 1,500/- per month and Rs. 18,000/- per annum on its own estimate. By deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimant's dependency was assessed at Rs. 12,000/- per annum. By multiplying the annual dependency of Rs. 12,000/- with the multiplier of '10', the compensation was worked out to Rs. 1,20,000/-. The Tribunal awarded further sum of Rs. 20,000/- towards Loss of Consortium to the widow and Loss of Love and Affection to the children. Thus, a total sum of Rs. 1,40,000/- was awarded as compensation to the claimant for the death of her husband Bishan Singh in the motor accident. The Tribunal, further, directed the insurer of the Jeep to pay interest at the rate of 9% per annum from the date of the application.

7. Mr. M.C. Kandpal, the learned Senior Counsel for the appellant submitted that the Tribunal has erred in discarding the claimant's evidence about the income of the deceased; in assessing his income at Rs. 1,500/- per month and Rs. 18,000/- per annum only; and in selecting the lower multiplier of '10' whereas the Second Schedule under Section 163-A of the Motor Vehicles Act prescribes the multiplier of '17' for the age group of 30 to 35 years.

8. Mr. D.S. Patni and Mr. Manish Dalakoti, the learned counsel for respondent No. 2 M/s National Insurance Company Ltd., on the other hand, supported the Award and submitted that the Tribunal has been quite liberal in awarding compensation of Rs. 1,40,000/- though the claimant could not establish the income of the deceased.

9. The findings recorded by the Tribunal that claimant's husband Bishan Singh died on account of the injuries sustained by him in the motor accident on 13.03.2003; the accident occurred due to the rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimant have, now, attained finality as the respondents have not filed any appeal against the Award.

10. The claimant though pleaded that her husband Bishan Singh used to earn Rs. 8,000/- per month from agriculture and by selling fruits and vegetables, no cogent and reliable evidence was adduced before the Tribunal to establish the said income of the deceased. In this state of evidence, we are satisfied that the Tribunal has rightly discarded the evidence of the claimant about the income of the deceased. Nevertheless, the income of the deceased assessed by the Tribunal at Rs. 1,500/- per month and Rs. 18,000/- per annum deserves to be reconsidered, as the same is on the lower side. The deceased being a grown up person aged about 35 years could have easily earned Rs. 80-90 per day even as an unskilled

labourer. That apart, even if the income of the deceased was to be assessed on the basis of the notional income prescribed in the Second Schedule under Section 163-A of the Motor Vehicles Act, the same could not have been less than Rs. 30,000/- per annum, as the notional income of Rs. 15,000/- per annum in the Second Schedule under Section 163-A of the Motor Vehicles Act was prescribed in the year 1994; the accident in the present case took place on 13.03.2003; and if the depreciation in the purchase value of the rupee during the period between 1994 to 2003 is taken into account, the notional income of Rs. 15,000/- per annum prescribed in the year 1994 would come to Rs. 30,000/- in the year 2003. We, therefore, purpose to re-compute the compensation taking the income of the deceased at Rs. 30,000/- per annum.

11. By deducting 1/3rd of the income of the deceased as his personal expenses (though in the claim petition only one claimant has been mentioned i.e. Smt. Nisha Devi, widow of deceased Bishan Singh, from the contents of the claim petition, it is apparent that the deceased had three minor children also), the claimant's dependency is assessed at Rs. 20,000/- per annum.

12. The multiplier of '10' selected by the Tribunal is certainly on the lower side. Deceased Bishan Singh was aged about 35 years on the date of the accident. His widow claimant Smt. Nisha Devi has been shown 30 years of age in the claim petition, whereas the three minor children were aged about 7 years, 8 years and 10 years. Considering the age of the deceased, the claimant and their three minor children, in our opinion, multiplier of '15' would be appropriate in the case.

13. By multiplying the annual dependency of Rs. 20,000/- with the multiplier of '15', the compensation works out to Rs. 3,00,000/-. The claimant is further entitled to receive Rs. 5,000/- towards Loss of

Consortium and Rs. 5,000/- for Funeral Expenses. Thus, the claimant becomes entitled to receive a total sum of Rs. 3,10,000/- (Rupees Three Lakhs and Ten Thousand only) as compensation for the death of her husband Bishan Singh in the motor accident.

14. For the foregoing reasons, the appeal filed by the appellant under Section 173 of the Motor Vehicles Act for enhancement of the compensation is allowed in part. The compensation of Rs. 1,40,000/- (Rupees One Lakh and Fourty Thousand only) awarded by the Tribunal is enhanced to Rs. 3,10,000/- (Rupees Three Lakhs and Ten Thousand only).

15. From the records, we gather that a sum of Rs. 1,58,261/- (Rupees One Lakh Fifty Eight Thousand Two Hundred and Sixty One only) was deposited by the Insurance Company before the Tribunal on 03.11.2004.

16. The claimant is further entitled to get interest on the enhanced amount of compensation of Rs. 1,70,000/- (Rupees One Lakh and Seventy Thousand only). With a view to avoid any possible delay in the computation of the amount of interest by the Claims Tribunal, we deem it proper to quantify the same ourselves. The claim petition in the case was filed on 20.05.2003. The impugned Award was passed on 09.08.2004 and the amount of compensation is being enhanced today on 11.10.2006. Considering all the above-mentioned factors, we quantify the amount of interest on the enhanced amount of Rs. 1,70,000/- at Rs. 20,000/- (Rupees Twenty Thousand only).

17. Respondent No. 2 M/s National Insurance Company Ltd. is directed to deposit the balance amount of compensation and the sum of Rs. 20,000/- quantified as interest on the enhanced amount of

compensation within a period of three months from today before the concerning Claims Tribunal.

18. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**
11.10.2006 11.10.2006

G